



What is a “problem”?

General confusion and an inability to get quick clear and concise answers
Failure to accomplish major goal(s) of the Act
Inability to successfully enforce the minimum standards of the act
Perceived violations

Who is involved:

RSA 483-B:6, Prior Approval; Permits

4 “agencies” involved with permitting impacts within the protected shoreland

- Subsurface systems (Subdivisions)
- Alteration of Terrain
- Wetlands
- “Municipality”

“The Municipality”

While any one applicant is only dealing a one town at a time the reality is that there are 234 towns with differing governing boards and local ordinances that may or may not conflict with that Shoreland protection Act.

Relatively few problems related to the Subsurface Program dealing with:

- Septic systems
- lot sizing

... and Alteration of Terrain dealing with:

- Drainage and surface run-off
- Soil stabilization

2 reasons...

No situations where project is only partially in jurisdiction.
Law doesn't really change the way the standards of these programs are applied.

Municipalities: Relatively few known "problems"

- It isn't that problems don't arise at the municipal level, it is just that we only know of them if they are reported as violations.
- Considerable questions and confusion
- Most common problem is the issuance of building permits that should not have been issued
- Towns have not been properly educated. There is little monitoring. If you don't know it's a violation you are not going to report it

Most known problems and confusion seems appear to be related to the interaction between Wetlands and Shoreland.

Why?

A large percentage of the problems are not the result of the interaction between the programs but rather are revealed during the Wetlands permit process.

Compliance sought through:

- plan revisions
- approval conditions
- education

Where are the problems occurring

2 major problem “areas”

- Maintaining a natural woodland buffer
- New construction and modification of existing structures

The Buffer

Buffer problem is easy to explain but perhaps not so easy to solve

The “50% over 20 year” standard is problematic

Insufficient background information

Pre-existing conditions

Date of last cut

Too many exceptions

Dead, diseased or hazard

In a construction footprint or envelop

no limit on percent coverage of construction

Restoration difficult

Construction

Issues are more complicated. Root of the problem lies in communication failures.

Multiple (too many) agencies both state and municipal regulating the same structures. Some under 483-B some under independent ordinances, laws and rules.

Language in the law allows agencies to interpret it differently based on their particular “stance.”

No established hierarchy in permitting Insufficient manpower available to effectively educate the agencies involved much less the general public

Shoreline Section or Shoreland Program

- 2 separate and independent programs with overlapping jurisdictions
- Regulating many of the same structures but with different standards and requirements

• **Shoreline** is a section of the Wetlands Bureau issuing permits for dredge fill and structures within surface waters and their banks.

• **Shoreland** started as a stand alone program. It regulates the size, location, and placement of structures within 250 feet of certain surface waters which just happens to include the bank. No *additional* permit required.

Best way to understand is to start from the beginning...

Development of Wetlands Bureau Shoreline Permitting

June 22, 1967 RSA 483-A all structures in tidal waters except seasonal structures that require no dredge, fill, removal or excavation.

In **July 2, 1969** jurisdiction is expand to include freshwaters, including their banks, and freshwater wetlands. A "Special Board" is established to review applications.

RSA 482-A:1 Purpose

It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public

HOW?

The method by which to achieve the purpose of the Wetlands Act is found in RSA 482-A:3

I. No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department.

The Bank

- It is defined as first break in slope.

- The Wetlands jurisdictional boundary "top of bank" is not a consistent line

- The width of the bank may vary across a frontage.

- Any dredge, fill or construction in the bank requires a Wetland permit.

A Little More Wetlands History...

September 7, 1978, Wetlands jurisdiction expanded to cover all seasonal structures.

1979 Wetlands Board established to replace the Special Board.

1986 Wetlands Board becomes part of DES.

RSA 483-A recodified and becomes RSA 482-A

More Wetlands...

July 23, 1989 Jurisdiction expanded to include a tidal buffer zone and sand dunes.

All work within 100 ft of the highest observable tide-line requires a permit.

Work within the dunes is largely prohibited by law.

Meanwhile in ShoreLAND...

RSA 483-B, the Comprehensive Shoreland Protection Act established 1991 but does not immediately take effect.

It will become effective when funding is dedicated to provide staff.

Jurisdiction is a 250 ft wide zone beginning at the "reference line" of:

Lakes and ponds ≥ 10 acres in size (Official List of Public Waters)

Rivers and streams – 4th order or larger*

Coastal waters

* Rivers designated for protection under RSA 483 prior to January 1, 1993 are exempt...except those added into coverage by later legislation.

1994 CSPA funding found!

Law becomes effective but only one position is funded.

The position will focus on education, but will pursue compliance on any complaint received. Violations will not be actively sought out.

No apparent priority given to educating one group over another.

Purpose of the Act, RSA 483-B:1

- I. The shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters.
- II. The public waters of New Hampshire are valuable resources held in trust by the state. The state has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and the adjacent shoreland for the greatest public benefit.
- III. There is great concern throughout the state relating to the utilization, protection, restoration and preservation of shorelands because of their effect on state waters.
- IV. Under current law the potential exists for uncoordinated, unplanned and piecemeal development along the state's shorelines, which could result in significant negative impacts on the public waters of New Hampshire.

Amended in 2002 to include:

- I-a. A natural woodland buffer, consisting of trees and other vegetation located in areas adjoining public waters, functions to intercept surface runoff, wastewater, subsurface flow, and deeper groundwater flows from upland sources and to remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants and to moderate the temperature of the near-shore waters.

HOW?

The development standards provided in this chapter shall be the minimum standards necessary to protect the public waters of the state of New Hampshire. These standards shall serve to:

- I. Further the maintenance of safe and healthful conditions.
- II. Provide for the wise utilization of water and related land resources.
- III. Prevent and control water pollution.
- IV. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats.

Cont.

HOW?

Cont.

- V. Protect buildings and lands from flooding and accelerated erosion.
- VI. Protect archaeological and historical resources.
- VII. Protect commercial fishing and maritime industries.
- VIII. Protect freshwater and coastal wetlands.
- IX. Control building sites, placement of structures, and land uses.
- X. Conserve shoreline cover and points of access to inland and coastal waters.

Cont.

HOW?

Cont.

XI. Preserve the state's lakes, rivers, estuaries and coastal waters in their natural state.

XII. Promote wildlife habitat, scenic beauty, and scientific study.

XIII. Protect public use of waters, including recreation.

XIV. Conserve natural beauty and open spaces.

XV. Anticipate and respond to the impacts of development in shoreland areas.

XVI. Provide for economic development in proximity to waters.

Moving right along...

1997 Second CSPA position funded. Now one outreach staff and one compliance staff

BUT...

Very little other funding all apparently dedicated to outreach.

No Database

Using an excel spreadsheet and all documents done from scratch in MSWord.

Across the hall in Shoreline...

In 1996 Wetlands hires a Shoreline Specialist whose primary function is to review all applications for shoreline impacts (freshwater). A second Shoreline specialist is added in 1997.

The Shoreline Specialists begin to increase the attention given to the CSPA during the review of wetlands permits.

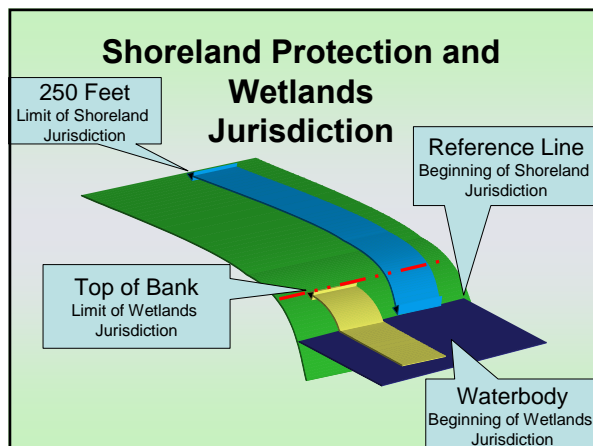
Shoreline's "stance"...

Wt 401.01 Purpose.

(a) The purpose of this chapter is to protect the public trust and other interests of the state of New Hampshire, by establishing requirements for the design and construction of structures in order to prevent unreasonable encroachment on the surface waters of the State.

(b) To preserve the integrity of the surface waters of the state, all structures shall be constructed so as to insure safe navigation, minimize alterations in prevailing currents, minimize the reduction of water area available for public use, avoid changes in subsurface conditions that would be deleterious to fish and wildlife habitat, and avoid changes in water movements that might cause erosion to abutting properties.

AND... cutting of vegetation that results in no disturbance of the soil doesn't require a permit



The problem unique to the permitting of shoreline structures under the CSPA is that projects, or even individual structures, may straddle the jurisdictional boundary.

Example: Dug-in boathouses

Many of the impacts are outside of the jurisdiction of the Wetlands Bureau as defined per RSA 482-A allowing the project to appear less impacting on paper.

Things get ugly...

By 1998 the Shoreline Section and Shoreland Program are both attempting to apply and enforce the CSPA. Unfortunately interpretations of the law are not in agreement.

Examples:

- Accessory structures in vs. above the bank
- Removal of vegetation-
under-story protection
- Primary building setback- can it be varied

In addition:

The inability to cross check names and properties through databases results in permits issued to individuals actively violating the Act.

Fixing the problem

2001 to consolidation of the Shoreline and Shoreland programs begins... "completed" late 2004 – early 2005

Staff as it exists today ...one staff applying both laws.

Wetlands funded (fees)

- Shoreland Section Supervisor
- 2 shoreline structures permitting positions
- part-time shore investigator – waivers and variances

Shoreland funded (general)

- outreach coordinator
- enforcement coordinator

Other advances...

All shoreland staff now on the same page
All working from one database, tracking now possible,
harder for violators to slip through.
New rules packages in place spring 2005

Appeals confusion remains:

Multiple appeal routes

Wetlands Permits – Wetlands Council

Shoreland Protection issue/Wetland permit – Wetland Council

Shoreland Protection issue/Subsurface or Alteration of Terrain permit – Water Council

Independent Shoreland Protection issue – Water Council

It is not unusual for Appellants to need to file appeals before both Councils at the same time.

Also need to address the coastal region

Much larger overlap with CSPA

All work in the 100 ft Tidal buffer zone requires a wetlands permit

Modifications to existing non-conforming structures requires redundant permitting

Future Meeting

Case Studies:

Merrymeeting boat ramp – New Durham

Tourrettes - Wolfeboro

Vail and Cambi boathouses - Moultonborough

Olsheski - Meredith